

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEREMY DANIEL SCHUH,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, *et al.* ,

Defendants.

CASE NO. 1:09-CV-982

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation dated November 10, 2011 (docket # 129) and Plaintiff Schuh's Objections to the Report and Recommendation (docket # 135). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that

Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

In his Report and Recommendation, Magistrate Judge Brenneman recommends that Plaintiff's second motion seeking a preliminary injunction or temporary restraining order (docket # 115) be denied. In that motion, Plaintiff complains of events he alleges occurred in 2011, not the 2008 events at issue in this case. The Court agrees with the Magistrate Judge that the 2011 events of which Plaintiff complains lie well beyond the scope of this litigation. If Plaintiff believes he has a new claim arising out of the 2011 events he alleges, then he must file a new case to pursue any such claim. That said, the Court also agrees with the Magistrate Judge that on this record, Plaintiff's request for injunctive relief would fail on the merits in any event, for the very reasons the Magistrate Judge describes in the Report and Recommendation.

The Court concludes that the Magistrate Judge's Report and Recommendation (docket # 129) is factually sound and legally correct.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 129) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's second Motion for Preliminary Injunction and/or T.R.O. (docket # 115) is **DENIED**.

/s/Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

Dated: February 1, 2012